

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA DEPARTMENT OF COMMERCE

In the Matter of the Applications of
Burlington Northern and Sante Fe
Railway Co., Leak Sites 6121
(Waite Park) and 7027 (Willmar).

FIRST PREHEARING ORDER

A prehearing conference in this matter was held on August 27, 1998, in Minneapolis.

Appearing on behalf of the Burlington Northern and Sante Fe Railway Co., the Applicant, was Glenn Olander-Quamme, of the firm of Spence, Rieke & Thurmer, 325 Cedar Street, Suite 600, St. Paul, Minnesota 55101.

Appearing on behalf of the Petroleum Tank Release Compensation Board, Respondent herein, were Patrick M. Driscoll and Michael J. Tostengard, Assistant Attorneys General, 445 Minnesota Street, Suite 1200, St. Paul, Minnesota 55101-2130.

Based upon discussions at the prehearing conference, as well as all the other files and proceedings, the Administrative Law Judge makes the following:

ORDER

1. That this matter be treated as a consolidated proceeding, joining together the proceeding known as In the Matter of the Application of Burlington Northern and Santa Fe Railway Co., Leak Site No. 6121 (Waite Park) and the proceeding known as In the Matter of the Application of Burlington Northern and Santa Fe Railway Co., Leak Site No. 7027 (Willmar).

2. That the sole issues to be determined at this stage of the consolidated proceeding are:

- a. whether applicant has sought reimbursement from the Board for costs which are also reimbursable under an applicable insurance policy, and
- b. whether applicant has made reasonable efforts to collect from an insurer, and

- c. whether applicant failed to truthfully and fully provide information regarding insurance coverage, insurance policies and insurance settlement documents.
- 3. That this consolidated proceeding shall follow the following schedule:
 - a. Discovery deadline: January 14, 1999.
 - b. Status conference: telephone call on January 22.
 - c. Dispositive motions: if any, to be served with brief by February 5. Reply brief due by February 15. Argument, if requested, will be by telephone.
 - d. Witness list: exchange final witness lists by March 12.
 - e. Hearing dates: March 18 and 19.

4. Applicant shall proceed with diligence to prepare an affidavit or similar document setting forth its understanding of the coverage and limitations of the insurance policies applicable to these sites and leaks. Upon receipt, the Board's staff shall diligently review the information submitted, along with all other information previously submitted, in order to arrive at its view of the coverage. If counsel cannot agree on a mutually acceptable schedule which would allow for the completion of both events by December 1, 1998, they should contact the Administrative Law Judge to discuss appropriate scheduling.

5. The parties shall use their best efforts to resolve this matter by settlement. Upon request, a different Administrative Law Judge from this office is available to serve as a mediator in order to assist the parties in reaching a mutually agreeable settlement.

Dated this 1st day of September 1998.

ALLAN W. KLEIN
Administrative Law Judge

MEMORANDUM

All counsel should be commended for the professional manner in which they have handled this matter to date. It is hoped that that ethic can continue.

The critical issue in both the Waite Park and Willmar proceedings is the same – the availability of insurance coverage and applicant's efforts to collect from insurers. Therefore, it is appropriate to consolidate the two matters into one proceeding. While each of them has smaller technical issues, counsel agreed that the two should be consolidated. The smaller, separate issues which are unique to each of the two sites were not viewed as serious enough to warrant litigation at this time. Counsel agreed that if the basic coverage issue could be resolved, the smaller issues could also be resolved.

The schedule set forth above also reflects an agreement of counsel, but the Administrative Law Judge has added paragraph 5 in an attempt to assure that the parties focus on the next steps needed to clarify the coverage issue and facilitate settlement. The December 1 completion date should be adequate to allow both parties to perform their tasks.

AWK